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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,064	12/13/2001	Robert Henry Rohrbaugh	8803	9885

27752 7590 04/30/2004

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EXAMINER


BRUNSMAN, DAVID M

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/020,064	Applicant(s) ROHRBAUGH ET AL. 	
	Examiner David M Brunzman	Art Unit 1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004 and 20 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 13-23 and 26-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicants' response has been carefully considered. Claims 1-12, 24 and 25, wherein the nanoparticles are fluorohectorite remain under consideration. The requirement for restriction was made final in the previous office action. The rejection of claim 6 under 35 U.S.C. 112(2) is withdrawn in view of applicant's result. In accordance with the response, the text of claim 6, while difficult, is not indefinite. Claim 6 is construed as optionally containing a material that would act as a binder if it were present in greater amounts but, in amounts less than that necessary for it to act as a binder.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9-12, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by McCarthy et al.

Example 8 of the reference discloses a film comprising fluorohectorite on a polymeric substrate the coating deposited in an amount of 0.3 lb per 13000 ft². By applicants' calculation in the response, this yields a coating weight of 11.25 micrograms/cm². However, the fluorohectorite comprises only 16.2% of the coating composition. The fluorohectorite are then present in an amount of 1.8 micrograms/cm². Instant claims 1-11 require that the fluorohectorite be present in an amount less than 3 micrograms/cm². with respect to claims 24-25, the deposited film is dried (see column 4, line 6) and not disclosed as having any residual water content. The term "dried" is not specifically defined in the context of the reference. Its plain meaning should be inferred as the intended meaning. The plain meaning of "dry" is having no moisture. The burden rests on applicant to show the meaning of the term as used in the reference is something different. The citation of "A

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glossary of Paint Terms" is insufficient. The citation is inapposite as the coating is not described as a paint and particularly not a substrate for a paint and, in fact, the disclosed properties make the instant composition particularly inappropriate as substrate for a paint. The small amount of material per unit area would be expected to exhibit a film thickness less than 300nm. The minimal particle size of Laponite™ products would cause formation of transparent coatings. Additional properties disclosed by applicant for the invention of the instant claim would be expected to be exhibited by the product of the reference as similar materials are used to form the films of each.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5989696, as applied above, in view of American Heritage Dictionary entry for "wetting agent".

The difference between the prior art and claim 8 is the addition of a wetting agent. The addition of a wetting agent to a film forming composition like that of the prior art would have been obvious to one of ordinary skill in the art because the definition of "wetting agent" teaches that it will cause a liquid to spread across and penetrate a surface more easily. As set forth above, the patent reference discloses similar coating weights. With respect to the argument concerning the reference having a "buried" coating, the example relied upon explicitly discloses a coating formed on a surface. Furthermore, even if the coating is necessarily "buried" in all instances, the instant claims do not exclude such arrangements.

This application contains claims drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, W, F, Sa; 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David M Brunsman
Primary Examiner
Art Unit 1755

DMB

A handwritten signature in black ink, appearing to read 'DMB', with a long horizontal stroke extending to the right.